

Message Text

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PAGE 01 STATE 118493

17

ORIGIN OPIC-12

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FM SECSTATE WASHDC

TO AMEMBASSY NAIROBI PRIORITY

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E.O. 11652: N/A

TAGS: EFIN

SUBJ: ATWELL DEVELOPMENT CO. AND MARISCHAL TEA ESTATE

REF: NAIROBI 4526

1. TO PERFECT INCONVERTIBILITY CLAIM ATWELL MUST BE ABLE TO TRANSFER LOCAL CURRENCY TO OPIC. OPIC UNCLEAR OF EXACT MEANING OF RESTRICTIONS ON "BLOCKED ACCOUNT" SPECIFIED IN CENTRAL BANK DIRECTION. MOREOVER, IF RETENTION OF KENYAN SHILLINGS IN REGULAR BANK ACCOUNT IS IN CONTRAVENTION OF KENYAN LAW, OPIC CANNOT ADVISE THAT ATWELL CONTINUE TO RETAIN KENYAN SHILLINGS IN SUCH ACCOUNT. OPIC WOULD APPRECIATE EMBASSY'S VIEWS ON ABOVE.

2. SECTION 14.02 OF CONTRACT PROVIDES WHEN AN APPLICATION FOR TRANSFER UNDER INCONVERTIBILITY MAY BE MADE WITH OPIC. ALTHOUGH OPIC NOT IN POSITION AT THIS TIME TO MAKE DETERMINATION AS TO WHETHER ATWELL HAS VALID INCONVERTIBILITY CLAIM, BELOW ARE STEPS ATWELL SHOULD FOLLOW IN ORDER TO COMPLETE APPLICATION FOR LIMITED OFFICIAL USE

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PAGE 02 STATE 118493

TRANSFER UNDER CONTRACT AS CONTAINED IN LETTER SENT TO ATWELL

AND LETTER POUCHED TO EMBASSY MAY 29, 1974.

A. CERTIFICATE BY INVESTOR THAT KENYAN SHILLINGS YOU ARE REQUESTING OPIC TO TRANSFER ARE "RETURN OF CAPITAL" OR "INVESTMENT EARNINGS" AS DEFINED UNDER CONTRACT. EVIDENCE SUCH SUMS RECEIVED BY YOU AS RESULT OF SALE OF MARISCHAL ESTATE.

B. CONFORMED COPY OF CONTRACT OF SALE OF MARISCHAL ESTATE CERTIFIED AS TRUE AND COMPLETE.

C. CERTIFICATE SETTING FORTH DATES WHEN LOCAL CURRENCY RECEIVED TOGETHER WITH EVIDENCE INDICATING RECEIPT ON SUCH DATES.

D. SPECIFICATIONS AS TO WHICH SUBPARAGRAPH OF SECTION 12.01 OF CONTRACT MAKES LOCAL CURRENCY ELIGIBLE FOR TRANSFER TOGETHER WITH EVIDENCE SUPPORTING CONCLUSION. SUCH EVIDENCE SHALL FURTHER DEMONSTRATE APPLICATION FOR TRANSFER WAS MADE TO APPROPRIATE AGENCY OF GOK WHICH CONTROLS TRANSFER OF KENYAN SHILLINGS INTO U.S. DOLLARS.

E. SPECIFICATION OF REFERENCE RATE OF EXCHANGE APPLICABLE UNDER CONTRACT AND BASIS FOR CONCLUSION. INDICATE ALL KENYAN TAXES, IF ANY, APPLICABLE TO TRANSFER OF LOCAL CURRENCY INTO U.S. DOLLARS UNDER THESE CIRCUMSTANCES.

F. CERTIFICATE ALL APPLICABLE KENYAN TAXES HAVE BEEN PAID WITH RESPECT TO THE RETURN OF CAPITAL OR INVESTMENT EARNINGS SOUGHT TO BE TRANSFERRED. CERTIFICATE SHOULD BE SUPPORTED BY CORRESPONDING TAX RECEIPTS.

G. EVIDENCE INVESTOR HAS TAKEN ALL REASONABLE STEPS REQUIRED TO EFFECT TRANSFER OF LOCAL CURRENCY UNDER RELEVANT LAWS, DECREES, REGULATIONS AND ADMINISTRATIVE DETERMINATIONS OF KENYA. REQUIREMENT INVESTOR FURNISH OPIC COPIES OF ALL SUCH LAWS, DECREES, REGULATIONS AND ADMINISTRATIVE DETERMINATIONS AS WELL AS A COMPLETE CHRONOLOGICAL HISTORY OF INVESTOR'S ATTEMPTS TO TRANSFER LOCAL CURRENCY INTO U.S. DOLLARS TOGETHER WITH COPIES OF ALL CORRESPONDENCE AND OTHER DOCUMENTS RELATING THERETO.

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PAGE 03 STATE 118493

H. CERTIFICATION INABILITY TO EFFECT TRANSFER OF LOCAL CURRENCY DOES NOT RESULT FROM OPERATION OF ANY LAW, DECREE, REGULATIONS, ADMINISTRATIVE DETERMINATION OR VOLUNTARY AGREEMENT IN EFFECT ON AUGUST 24, 1967, AND WHICH WOULD HAVE THEN RESULTED IN COMPARABLE INABILITY TO EFFECT SIMILAR TRANSFER OF FUNDS.

I. CERTIFICATION THAT NO PRIOR CLAIMS HAVE BEEN FILED UNDER CONTRACT.

J. SPECIFICATION OF AMOUNT OF U.S. DOLLARS BELIEVE ENTITLED TO RECEIVE UNDER CONTRACT, INCLUDING COMPUTATIONS USED TO ARRIVE AT SUCH AMOUNT AND CONTRACTUAL PROVISIONS RELIED UPON IN MAKING SUCH DETERMINATION. DECON 6/5/75. KISSINGER

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